

Addressing ethical provenance when designating UK national treasures

The case for reviewing how the UK classifies cultural objects as national treasures

The recent Meissen case presents the UK with an opportunity to reflect on how national treasures are classified and how to retain the integrity of this special category.

Doing so is a **timely endeavour**. From 2020 onwards, export licence requests for cultural objects that entered the UK after 1970 (a widely viewed ethical marker) will be eligible for consideration as national treasures by Expert Advisers, the Reviewing Committee and the Secretary of State because they will have been in the UK for 50 years or more. These requests may include archaeological objects with unclear provenance (ownership history). **Without an expanded set of criteria there is a risk that illicit objects could be classified as UK national treasures and thus tarnish the entire category of national treasures.**

Formally considering the ethical provenance of objects is also a **necessary endeavour**. The UK government has shown a strong commitment to tackling the illicit trade in cultural objects and addressing the ongoing problem of Nazi Era dispossession of cultural objects. Modifying the process for designating objects as national treasures may also permit an ethical approach in the UK to dealing with objects acquired during times of unequal colonial power relations.

Case study: The Meissen figure of Pulcinell

The circumstances of the export licence application for the Meissen figure of 'Pulcinell' heard in December 2016 showed the importance of formally drawing on an object's ownership history when considering whether it is a national treasure.

The Reviewing Committee found that 'Pulcinell' satisfied Waverley Criteria 2 and 3. In following this recommendation, the Secretary of State deferred the granting of an export licence to give an opportunity for a UK purchaser to acquire the figure and ensure public access to it. Since no purchasers came forward, the owner of the figure was granted an export licence.

However, a Jewish lady - Emma Budge - had been its original owner. The Meissen figure had been sold at an auction in Berlin in 1937 with other objects from her collection that the UK's Spoliation Advisory Panel classified as a 'forced sale' under Nazi persecution. Despite this, 'Pulcinell' was still listed as a national treasure which the 2016-17 Export report lamented could not be 'saved for the nation'.

Key issues raised by this case

Tarnishing the entire category

Designating objects with Nazi Era provenance as significant to the UK's national heritage may tarnish and devalue this special category.

Risking institutional integrity

Calling for public institutions to purchase objects with Nazi Era provenance risks the integrity of these institutions and misaligns with other government guidelines.

Contradicting our commitments

This contradicts the UK's strong commitment to tackling Nazi Era dispossessions (such as the Secretary of State's 2014 approval of the return of other figures from Emma Budge's estate by the V&A Museum).

Affecting public perception

Classifying objects to which others have moral claims as national treasures can impact on the public perception of those objects and the category of national treasures.

Perpetuating tainted moral provenance

Issuing export licences for objects with unclear provenance can facilitate the circulation of objects with tainted moral provenance, contrary to strong commitments to return these objects to their original owners.

Implications of the case study

Objects acquired during colonial times C16th-20th

Treating as national treasures objects which were looted during colonial times or acquired during unequal power relations potentially tarnishes the entire category.

Where objects are being repatriated abroad, an approach is needed to bypass designation as national treasures otherwise this undermines attempts to do justice (e.g. the Open General Export Licence for objects returned on the recommendation of the Spoliation Advisory Panel).

Objects of importance to other countries

Some objects considered for export may be integral to the cultural heritage of another nation, or could be reunified with the rest of the object, or their original location if exported.

This has sometimes been considered as an additional factor (by the Committee: Case 8, 1980-81 Baroque Choir Stalls or by the Secretary of State: Case 2, 2008-09, Papers of The 8th of Earl Elgin).

Objects entering the UK after 1970

The 1970 date is recognised as an ethical marker that has been supported across the sector, including by the Department for Digital, Culture, Media and Sport (DCMS) in the Due Diligence Guidelines of 2005. This is separate from any legal obligations which may apply to objects before 1970.

2020 Time for action

After 2020, the Reviewing Committee will start considering objects that entered the UK after 1970. A higher ethical obligation will be placed on museums to be certain that objects they seek to acquire have not been the subject of illegal excavation or export.

To achieve this, the Reviewing Committee should apply criteria consistent with DCMS's own Due Diligence Guidelines when designating objects as national treasures. This may also present an opportunity to consider a wider role for ethical provenance and to re-evaluate the traditional 1970 ethical marker.

Recommendations

The Secretary of State, the DCMS and Arts Council England have several options to formally integrate a review of an object's provenance when designating objects as national treasures.

Diverge from Reviewing Committee recommendations

The Secretary of State could specifically take account of ethical provenance when exercising their discretion by considering the DCMS Due Diligence Guidelines for Museums (2005) and commitments to dealing with Nazi Era objects.

Add a provenance requirement to the Statutory Guidance

Consider adding a requirement to the Statutory Guidance (2015) in addition to the Waverley Criteria for the Reviewing Committee to assess the provenance of objects, especially Nazi Era objects, colonial objects, those important to other nations and post-1970s objects.

Elevate the significance of ethical history

Publish all decisions that recommend against designating an object as a national treasure on grounds of unclear provenance, thus elevating the significance of ethical history within statutory processes and considerations of national treasures.

Make a statement about problematic provenance

When limited information is known about the history of a cultural object during 1933-1945 or if it entered the UK after 1970, a public statement could be made about whether the elements of the DCMS Due Diligence Guidelines are met, highlighting any gaps or ambiguities in the object's history.

Seek advice from the Spoliation Advisory Panel

Where there are gaps in provenance information between 1933-1945, the Secretary of State could seek advice from the Spoliation Advisory Panel (or a specially convened sub-panel) about the object's provenance.

- Whether it would be feasible for such formal support from the Spoliation Advisory Panel would depend on whether referrals could be considered within the usual timescale for considering export licences.

Establish a process for brokering agreements

The DCMS could establish a process for brokering agreements between current and original owners or communities of origin to assist in cases where problematic provenance is identified.

This visual summary is based on Charlotte Woodhead, 'Tarnished Treasures: Provenance and the UK's Waverley Criteria' (2019) 5 *Santander Art & Culture Law Review* 109. Read the full summary at www.warwick.ac.uk/law/ethical-provenance

